

- 839.1116 If, because of the change in my retirement coverage, I will owe larger deposits for military and civilian service credit, will I have to pay the additional deposit due or will OPM actuarially reduce my annuity?
- 839.1117 If I elect to change my retirement coverage under the FERCCA, can I get a refund of the service credit deposit I made and receive the actuarial reduction instead?
- 839.1118 Will my annuity be actuarially reduced because I had Government contributions in my TSP account?
- 839.1119 How is the actuarial reduction for TSP computed?

#### SURVIVOR BENEFITS

- 839.1121 What is the Actuarial Reduction for the Basic Employee Death Benefit (BEDB)?
- 839.1122 Does receipt of a one-time payment of retirement contributions as a death benefit prevent me from electing CSRS Offset?

#### Subpart L—Discretionary Actions by OPM

- 839.1201 If I took legal action against my employer because of a qualifying retirement coverage error, can OPM reimburse me for expenses related to my legal actions?
- 839.1202 Can OPM waive repayment of a monetary award I received as resolution of the harm caused me by a qualifying retirement coverage error?
- 839.1203 Can OPM compensate me for my losses if I did not take any legal action against my employer, but did incur some expenses because of a qualifying retirement coverage error?
- 839.1204 On what basis will OPM review claims under this subpart?
- 839.1205 Does the Director of OPM review the claims?
- 839.1206 How do I submit a claim under this subpart?

#### Subpart M—Appeal Rights

- 839.1301 What if my employer determines my error is not subject to these rules?
- 839.1302 What types of decisions can I appeal?
- 839.1303 Are there any types of decisions that I cannot appeal?
- 839.1304 Is there anything else I can do if I am not satisfied with the way my error was corrected?

AUTHORITY: Title II, Pub. L. 106-265, 114 Stat. 770.

SOURCE: 66 FR 15609, Mar. 19, 2001, unless otherwise noted.

### Subpart A—General Provisions

#### 839.101 What is the Federal Erroneous Retirement Coverage Corrections Act?

(a) The Federal Erroneous Retirement Coverage Corrections Act (FERCCA) is Title II of Public Law 106-265, enacted September 19, 2000. The FERCCA addresses the problems created when employees are in the wrong retirement plan for an extended period.

(b) Generally, you must be in the wrong retirement plan for at least 3 years of service after December 31, 1986, before the FERCCA applies to you. Depending on the type of error, the FERCCA provides:

- (1) A choice between retirement plans,
- (2) New rules for crediting civilian and military service that was not subject to retirement deductions,
- (3) Payment of lost earnings on employee make-up contributions to the Thrift Savings Plan, and
- (4) Payment of certain out-of-pocket expenses that are a direct result of a retirement coverage error.

#### 839.102 Definitions.

*Agency* means an executive agency as defined in section 105 of title 5, United States Code; a legislative branch agency; a judicial branch agency; and the U.S. Postal Service and Postal Rate Commission.

*Agency automatic (1%) contributions* means contributions made to a FERS participant's Thrift Savings Plan account by his or her employing agency under 5 U.S.C. 8432(c)(1) or (c)(3).

*Agency matching contributions* means contributions made to a FERS participant's Thrift Savings Plan account by his or her employing agency under 5 U.S.C. 8432(c)(2).

*Annuitant* means the same as *Retiree*. *Basic Employee Death Benefit or BEDB* means the FERS survivor benefit payable as a lump sum or over 36 months, described in § 843.309 of this chapter.

*Board* means the Federal Retirement Thrift Investment Board established under 5 U.S.C. 8472.

*CSRS* means the Civil Service Retirement System, as described in subchapter III of chapter 83 of title 5, United States Code.

*CSRS component* means the part of a FERS retirement benefit that is computed under CSRS provisions (see §846.304 of this chapter).

*CSRS Offset* means the Civil Service Retirement System Offset plan, which is for employees whose service is subject to CSRS deductions and Social Security taxes, as described in 5 U.S.C. 8349.

*Employee* means an employee or Member individual as defined in section 8331(1) and (2) or 8401(11) and (20) of title 5, United States Code. Employee includes an individual who has applied for retirement benefits, but not separated from service.

*Employee retirement deductions* means the amount that is deducted from basic pay under section 8334(a) of title 5, United States Code, for CSRS employees; or section 8334(k) of title 5, United States Code, for CSRS Offset employees; or the portion of the normal cost of FERS coverage that is deducted from an employee's basic pay under section 8422(a) of title 5, United States Code.

*Employer* means, with respect to an employee, that individual's employing agency.

*Employer retirement contributions* means the employer share of retirement contributions that are required payments to the Fund under sections 8334(a) and 8423(a) of title 5, United States Code.

*Former spouse* means a living person who was married to you for at least 9 months.

*FERCCA* means the Federal Erroneous Retirement Coverage Corrections Act.

*FERS* means the Federal Employees' Retirement System, as described in chapter 84 of title 5, United States Code.

*Fund* means the Civil Service Retirement and Disability Fund described in section 8348 of title 5, United States Code.

*Government contributions* means agency automatic (1%) contributions and agency matching contributions.

*Lost earnings* means earnings that you would have received had your make-up contributions to the Thrift Savings Fund been made during the pe-

riod of the error when they should have otherwise been made.

*Make-up contributions* means employee contributions to the Thrift Savings Plan that should have been deducted from a participant's basic pay earlier, but were not due to an employing agency error.

*MSPB* means the Merit Systems Protection Board described in chapter 12 of title 5, United States Code.

*OPM* means the Office of Personnel Management.

*Present value factor* has the same meaning as in §831.2202 or §842.702 of this chapter, as applicable.

*Previously corrected* means a retirement coverage error that has been properly corrected before March 19, 2001.

*Qualifying court order* has the same meaning as in §846.702 of this chapter, referring to court orders that affect CSRS or FERS payments following a divorce or legal separation.

*Qualifying retirement coverage error* means an erroneous decision by an employee or agent of the Government as to whether Government service is CSRS covered, CSRS Offset covered, FERS covered, or Social Security-Only covered that remained in effect for at least 3 years of service after December 31, 1986.

*Reemployed annuitant* means a CSRS or FERS retiree who is reemployed under conditions that do not terminate the CSRS or FERS annuity. (See part 837 of this chapter for additional information on reemployed annuitants.)

*Retiree* means a former employee or Member who is receiving, or meets the statutory age and service requirements for, an annuity under either CSRS or FERS. This includes individuals who meet the statutory requirements for benefits and chose to postpone the beginning date of the annuity under §842.204(c) or §842.212(b)(1)(ii) of this chapter (pertaining to FERS MRA+10 and FERS deferred benefits). Retiree does not include a current spouse, former spouse, child, or person with an insurable interest receiving a survivor annuity. An individual who has left Federal service after completing 5 years of service but has not reached the age at which annuity payments

may begin is considered a “separated employee” rather than a retiree.

*Retirement coverage* means participation in CSRS, CSRS Offset, FERS, or Social Security-Only. Retirement coverage is shown on the Notification of Personnel Action (Standard Form 50) or other similar record of personnel actions.

*Retirement plan* means the same as *retirement coverage*.

*Separated employee* means a former employee or Member who has separated from service and who has not met all the requirements for retirement under CSRS or FERS.

*Social Security coverage* means service as a Federal employee that is employment under section 210 of the Social Security Act (42 U.S.C. 410) and is subject to Social Security taxes.

*Social Security-Only* means coverage under Social Security without concurrent coverage under CSRS, CSRS Offset, or FERS.

*Social Security taxes* means the Old Age, Survivors, and Disability Insurance taxes imposed on employees under section 3101(a) of the Internal Revenue Code of 1986 (31 U.S.C. 3101(a)) and on employers under section 3111(a) of the Internal Revenue Code of 1986 (31 U.S.C. 3111(a)).

*Survivor* means a person entitled to benefits under chapter 83 or 84 of title 5, United States Code, based on the service of a deceased employee, separated employee, or retiree.

*Thrift Savings Plan or TSP* means the Federal Retirement Thrift Savings Plan established by the Federal Employees’ Retirement System Act of 1986, Pub. L. 99-335, 100 Stat. 514, which has been codified, as amended, primarily at 5 U.S.C. 8351 and 8401-8479.

## Subpart B—Eligibility

### GENERAL PROVISIONS

#### 839.201 Do these rules apply to me?

(a) These rules apply to employees who had a qualifying retirement coverage error. For all purposes, a qualifying retirement coverage error must have lasted for at least 3 years of Federal service after December 31, 1986, as stated in the definitions section (§ 839.102). It does not matter whether

you have left Federal service, retired, or have been reemployed as an annuitant, as long as you had a qualifying retirement coverage error. In addition, the survivor of an employee, separated employee, or retiree who had a qualifying retirement coverage error is also covered by these rules.

(b) An error that lasted less than 3 years of Federal service after December 31, 1986, is not qualifying under the rules in this part.

(c) For errors lasting less than 3 years that involve erroneous placement in FERS during a period that the employee was eligible to elect FERS, see § 846.204(b) of this chapter for guidance.

### ELECTION OPPORTUNITY

#### § 839.211 If these rules apply to me because I had a qualifying retirement coverage error, can I choose which retirement plan I want to be in?

The FERCCA does not provide an election opportunity in all situations where there was a qualifying retirement coverage error. Even if your error is one that provides an election opportunity under the FERCCA, certain events may disqualify you from making an election under the FERCCA. If you had a qualifying retirement coverage error, your eligibility to choose your retirement plan may be affected by the situations described in the next seven questions.

#### § 839.212 May I make a retirement coverage election if I received a refund of my retirement deductions after I was corrected to FERS?

If your qualifying retirement coverage error was previously corrected to FERS and you then received a refund of your FERS retirement deductions, you are not allowed to elect retirement plan coverage under the FERCCA.

#### § 839.213 May I make a retirement coverage election if I withdrew all or part of my TSP account after I was corrected to FERS?

(a) You may not make a retirement coverage election if your qualifying retirement coverage error was previously corrected to FERS, and you later received one of the following TSP withdrawals: